

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 150

Introduced by Senator Escutia

February 7, 2005

An act to amend Sections 791.10, 791.12, and 791.13 of the Insurance Code, relating to insurance underwriting.

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as amended, Escutia. Insurance: adverse underwriting decisions.

Existing law requires that, in the event of an adverse underwriting decision, as defined, the insurance institution or agent responsible for the decision comply with certain requirements, including a requirement to either provide the consumer with the specific reasons for the adverse underwriting decision in writing or advise the person that upon written request he or she may receive the specific reasons in writing. Existing law requires the institution or agent, upon receipt of a written request, to provide the consumer with the specific items of personal and privileged information that support those reasons, except as specified.

This bill would require the insurance institution or agent to provide the reasons for the adverse underwriting decision in all instances.

Existing law prohibits an insurance institution or agent from basing an adverse underwriting decision on various types of information, including personal information received from an insurance-support organization whose primary source of information is insurance institutions, except as specified.

This bill would additionally require certain information related to a claim in the case of auto insurance or property insurance be obtained by the insurer prior to an adverse underwriting decision, as specified.

The bill would make additional conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 791.10 of the Insurance Code is
2 amended to read:

3 791.10. (a) In the event of an adverse underwriting decision
4 the insurance institution or agent responsible for the decision
5 shall provide the applicant, policyholder, or individual proposed
6 for coverage, in writing, at the time that the adverse action is
7 communicated, with each of the following:

8 (1) The specific reason or reasons for the adverse underwriting
9 decision.

10 (2) A summary of the rights established under Sections 791.08
11 and 791.09.

12 (3) The specific items of personal and privileged information
13 that support the reason or reasons for the adverse underwriting
14 decision; provided, however:

15 (A) The insurance institution or agent shall not be required to
16 furnish specific items of privileged information if it has a
17 reasonable suspicion, based upon specific information available
18 for review by the commissioner, that the applicant, policyholder
19 or individual proposed for coverage has engaged in criminal
20 activity, fraud, material misrepresentation or material
21 nondisclosure.

22 (B) Specific items of medical record information supplied by a
23 medical care institution or medical professional shall be
24 disclosed either directly to the individual about whom the
25 information relates or to a medical professional designated by the
26 individual and licensed to provide medical care with respect to
27 the condition to which the information relates, whichever the
28 individual prefers.

29 Mental health record information shall be supplied directly to
30 the individual, pursuant to this subdivision, only with the

1 approval of the qualified professional person with treatment
2 responsibility for the condition to which the information relates.

3 (4) The names and addresses of the institutional sources that
4 supplied the specific items of information given pursuant to
5 paragraph (3); provided, however, that the identity of any
6 medical professional or medical care institution shall be
7 disclosed either directly to the individual or to the designated
8 medical professional, whichever the individual prefers.

9 (b) The obligations imposed by this section upon an insurance
10 institution or agent may be satisfied by another insurance
11 institution or agent authorized to act on its behalf.

12 (c) When an adverse underwriting decision results solely from
13 an oral request or inquiry, the explanation of reasons and
14 summary of rights required by subdivision (a) may be given
15 orally to the extent that such information is available.

16 SEC. 2. Section 791.12 of the Insurance Code is amended to
17 read:

18 791.12. No insurance institution or agent may base an adverse
19 underwriting decision in whole or in part on the following:

20 (a) On the fact of a previous adverse underwriting decision or
21 on the fact that an individual previously obtained insurance
22 coverage through a residual market mechanism; provided,
23 however, an insurance institution or agent may base an adverse
24 underwriting decision on further information obtained from an
25 insurance institution or agent responsible for a previous adverse
26 underwriting decision. The further information, when requested,
27 shall create a conclusive presumption that the information is
28 necessary to perform the requesting insurer's function in
29 connection with an insurance transaction involving the individual
30 and, when reasonably available, shall be furnished the requesting
31 insurer and the individual, if applicable.

32 (b) On personal information received from an
33 insurance-support organization whose primary source of
34 information is insurance institutions; provided, however, an
35 insurance institution or agent may base an adverse underwriting
36 decision on further personal information obtained as the result of
37 information received from an insurance-support organization.

38 (c) For personal automobile coverage as defined by Section
39 660 and residential property coverage as defined by Section 675,
40 on information relating to a claim received from a

1 insurance-support organization whose primary source of
2 information is insurance institutions, unless the information
3 includes the following, provided however, that if the information
4 is not available, an insurance institution or agent may base an
5 adverse underwriting decision on further claim history
6 information obtained based upon investigation of the information
7 received from an insurance-support organization:

- 8 (1) The date of loss.
- 9 (2) Whether the claim is open or closed.
- 10 (3) The relevant coverage peril and the description of the
11 specific cause of the loss.
- 12 (4) A description of the property damaged or the liability
13 incurred.
- 14 (5) The address of the damaged property, if applicable.
- 15 (6) In the case of an auto claim, the determination of fault, if
16 applicable known.
- 17 (7) The monetary amount of damages paid, or if open,
18 reserved.
- 19 (8) If known, a description of the repairs completed or other
20 status of damages.

21 (d) On the fact that an individual has previously inquired and
22 received information about the scope or nature of coverage under
23 a residential fire or property insurance policy, if the information
24 is received from an insurance-support organization whose
25 primary source of information is insurance institutions and the
26 inquiry did not result in the filing of a claim.

27 SEC. 3. Section 791.13 of the Insurance Code is amended to
28 read:

29 791.13. (a) An insurance institution, agent, or
30 insurance-support organization shall not disclose any personal or
31 privileged information about an individual collected or received
32 in connection with an insurance transaction unless the disclosure
33 is:

- 34 ~~(a)~~
- 35 (1) With the written authorization of the individual, and meets
36 either of the conditions specified in ~~paragraph (1) or (2)~~
37 *subparagraph (A) or (B)*:

38 ~~(1)~~

1 (A) If such authorization is submitted by another insurance
2 institution, agent, or insurance-support organization, the
3 authorization meets the requirement of Section 791.06.

4 ~~(2)~~

5 (B) If such authorization is submitted by a person other than
6 an insurance institution, agent, or insurance-support organization,
7 the authorization is:

8 ~~(A) Dated;~~

9 (i) Dated.

10 ~~(B)~~

11 (ii) Signed by the individual.

12 ~~(C)~~

13 (iii) Obtained one year or less prior to the date a disclosure is
14 sought pursuant to this section.

15 ~~(b)~~

16 (2) To a person other than an insurance institution, agent, or
17 insurance-support organization, provided such disclosure is
18 reasonably necessary:

19 ~~(1)~~

20 (A) To enable such person to perform a business, professional
21 or insurance function for the disclosing insurance institution,
22 agent, or insurance-support organization or insured and such
23 person agrees not to disclose the information further without the
24 individual's written authorization unless the further disclosure:

25 ~~(A)~~

26 (i) Would otherwise be permitted by this section if made by an
27 insurance institution, agent, or insurance-support organization; or

28 ~~(B)~~

29 (ii) Is reasonably necessary for such person to perform its
30 function for the disclosing insurance institution, agent, or
31 insurance-support organization.

32 ~~(2)~~

33 (B) To enable such person to provide information to the
34 disclosing insurance institution, agent or insurance-support
35 organization for the purpose of:

36 ~~(A)~~

37 (i) Determining an individual's eligibility for an insurance
38 benefit or payment; or

39 ~~(B)~~

(ii) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.

~~(e)~~

(3) To an insurance institution, agent, insurance-support organization or self-insurer, provided the information disclosed is limited to that which is reasonably necessary under either paragraph (1) or (2) subparagraph (A) or (B):

~~(1)~~

(A) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or

~~(2)~~

(B) For either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

~~(d)~~

(4) To a medical-care institution or medical professional for the purpose of any of the following:

~~(1)~~

(A) Verifying insurance coverage or benefits.

~~(2)~~

(B) Informing an individual of a medical problem of which the individual may not be aware.

~~(3)~~

(C) Conducting operations or services audit, provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes.

~~(e)~~

(5) To an insurance regulatory authority; or

~~(f)~~

(6) To a law enforcement or other governmental authority pursuant to law.

~~(g)~~

(7) Otherwise permitted or required by law.

~~(h)~~

(8) In response to a facially valid administrative or judicial order, including a search warrant or subpoena.

~~(i)~~

(9) Made for the purpose of conducting actuarial or research studies, provided:

~~(1)~~

(A) No individual may be identified in any actuarial or research report.

~~(2)~~

(B) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed.

~~(3)~~

(C) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.

~~(j)~~

(10) To a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance-support organization, provided:

~~(1)~~

(A) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation.

~~(2)~~

(B) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.

~~(k)~~

(11) To a person whose only use of such information will be in connection with the marketing of a product or service, provided:

~~(1)~~

(A) No medical-record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed; or

~~(2)~~

(B) The individual has been given an opportunity to indicate that he or she does not want personal information disclosed for

1 marketing purposes and has given no indication that he or she
2 does not want the information disclosed; and

3 ~~(3)~~

4 (C) The person receiving such information agrees not to use it
5 except in connection with the marketing of a product or service.

6 ~~(4)~~

7 (12) To an affiliate whose only use of the information will be
8 in connection with an audit of the insurance institution or agent
9 or the marketing of an insurance product or service, provided the
10 affiliate agrees not to disclose the information for any other
11 purpose or to unaffiliated persons.

12 ~~(m)~~

13 (13) By a consumer reporting agency, provided the disclosure
14 is to a person other than an insurance institution or agent.

15 ~~(n)~~

16 (14) To a group policyholder for the purpose of reporting
17 claims experience or conducting an audit of the insurance
18 institution's or agent's operations or services, provided the
19 information disclosed is reasonably necessary for the group
20 policyholder to conduct the review or audit.

21 ~~(o)~~

22 (15) To a professional peer review organization for the
23 purpose of reviewing the service or conduct of a medical-care
24 institution or medical professional.

25 ~~(p)~~

26 (16) To a governmental authority for the purpose of
27 determining the individual's eligibility for health benefits for
28 which the governmental authority may be liable.

29 ~~(q)~~

30 (17) To a certificate holder or policyholder for the purpose of
31 providing information regarding the status of an insurance
32 transaction.

33 ~~(r)~~

34 (18) To a lienholder, mortgagee, assignee, lessor, or other
35 person shown on the records of an insurance institution or agent
36 as having a legal or beneficial interest in a policy of insurance.
37 The information disclosed shall be limited to that which is
38 reasonably necessary to permit the person to protect his or her
39 interest in the policy and shall be consistent with Article 5.5
40 (commencing with Section 770).

1 ~~(s)~~
2 **(b)** No information shall be submitted by an insurance
3 institution or agent to an insurance-support organization with
4 respect to claims information for personal automobile coverage
5 as defined by Section 660 or residential coverage as defined by
6 Section 675 unless all related information required by
7 subdivision (c) of Section 791.12 is submitted in conjunction
8 with the claim information.

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